

§ 2200.210

after the hearing. All relevant transcript paragraphs and pages shall be excerpted and included in the decision. Alternatively, within 45 days of the hearing, the Judge will issue a written decision. The decision will be in accordance with § 2200.90. If additional time is needed, approval of the Chief Administrative Law Judge is required.

(g) *Filing of Judge's decision with the Executive Secretary.* When the Judge issues a written decision, it shall be filed simultaneously with the Commission and the parties. Once the Judge's order is transmitted to the Executive Secretary, § 2200.90(b) applies, with the exception of the 11-day period provided for in rule § 2200.90(b)(2).

[60 FR 41809, Aug. 14, 1995, as amended at 62 FR 40934, July 31, 1997; 73 FR 56492, Sept. 29, 2008; 74 FR 63988, Dec. 7, 2009; 75 FR 18404, Apr. 12, 2010]

§ 2200.210 Review of Judge's decision.

Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's written decision or order, the parties may pursue the case following the rules in subpart F.

§ 2200.211 Applicability of subparts A through G.

The provisions of subpart D (except for § 2200.57) and §§ 2200.34, 2200.37(d)(5), 2200.38, 2200.71, 2200.73 and 2200.74 will not apply to Simplified Proceedings. All other rules contained in Subparts A through G of the Commission's rules of procedure will apply when consistent with the rules in this subpart governing Simplified Proceedings.

[60 FR 41809, Aug. 14, 1995, as amended at 70 FR 22792, May 3, 2005]

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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APPENDIX A TO PART 2201—SCHEDULE OF FEES

AUTHORITY: 29 U.S.C. 661(g); 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

SOURCE: 71 FR 56350, Sept. 27, 2006, unless otherwise noted.

§ 2201.1 Purpose and scope.

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission (OSHRC or Commission) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

§ 2201.2 Description of agency.

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

§ 2201.3 Delegation of authority and responsibilities.

(a) The Chairman delegates to the Chief FOIA Officer the authority to act upon all requests for agency records.

(b) The Chief FOIA Officer shall designate the FOIA Disclosure Officer(s), who shall be responsible for processing FOIA requests.

(c) The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response.

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address and telephone number of the FOIA Requester Service Center is 1120 20th Street, NW., Room 941, Washington, DC 20036-3457, (202) 606-5700.

§ 2201.4 General policy and definitions.

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 552(b) or published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.5(a). Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Commission in any format, including electronic format. In response to FOIA requests, the Commission will search for records manually or by automated means, except when an automated search would significantly interfere with the operation of the Commission's automated information system.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the FOIA Disclosure Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Record availability at the OSHRC on-site FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying at the OSHRC on-site FOIA Reading Room, 1120 20th St., NW., Ninth Floor, Washington, DC 20036-3457. These records include:

- (1) Final decisions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases;
- (2) OSHRC Rules of Procedure and Guides to those procedures;

(3) Specific agency policy statements adopted by OSHRC and not published in the FEDERAL REGISTER;

(4) Administrative staff manuals that affect a member of the public;

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records; and

(6) A general index of records referred to under paragraph (c)(5) of this section.

(d) *Record availability at the OSHRC e-FOIA Reading Room.* Materials created on or after November 1, 1996 under paragraphs (c)(1), (2), (3), (4), (5) and (6) of this section may also be accessed electronically through the Commission's Web site at <http://www.oshrc.gov>.

(e) *Definitions.* For purposes of this part:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Disclosure Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Disclosure Officer has reasonable cause to doubt a requester's stated use, the FOIA Disclosure Officer shall provide the requester a reasonable opportunity to submit further clarification.

Direct costs means those expenses that the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.